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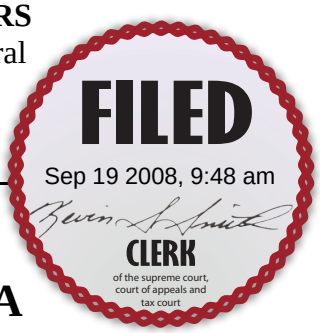

IN THE COURT OF APPEALS OF INDIANA

BOYD BRYANT,	)	
	)	
Appellant-Claimant,	)	
	)	
vs.	)	No. 93A02-0805-EX-423
	)	
GOLDEN RULE INSURANCE COMPANY and REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT,	)	
	)	
Appellees.	)	

APPEAL FROM THE UNEMPLOYMENT INSURANCE REVIEW BOARD
Case No. 08-R-715

September 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Claimant, Boyd Bryant (Bryant), appeals the decision of the Appellee, Unemployment Insurance Review Board (Review Board), affirming the Administrative Law Judge's (ALJ) finding that Bryant had been discharged for just cause.

We affirm.

ISSUES

Bryant raised two issues for our review, which we restate as:

(1) Whether the ALJ properly developed the record; and

(2) Whether the decision of the ALJ was supported by sufficient evidence and facts.

FACTS AND PROCECURAL HISTORY

On October 30, 2007, Bryant was terminated from the Golden Rule Insurance Company (Employer) where he had been employed as a product advisor since January 5, 2006. He applied for unemployment and on November 19, 2007, a deputy with the Indiana Department of Workforce Development determined that the discharge was for just cause and rejected Bryant's claim. On November 27, 2007, he appealed the determination to an ALJ. On January 18, 2008, the ALJ held a hearing, after which she affirmed the decision of the deputy. On February 6, 2008, Bryant appealed the ALJ's decision to the Review Board. The Review Board remanded the matter back to the ALJ because the ALJ had failed to make sufficient findings. On March 7, 2008, the ALJ issued amended findings of fact, including:

> The Employer discharged [Bryant] due to complaints regarding rudeness to customers and fellow employees.
>
> On April 27, 2007, the Employer received a customer complaint. On this occasion, [Bryant] was impatient with a customer. In that conversation, [Bryant] said to the customer, "Now this is the third one more question." The

> customer then asked, "what did you say?" [Bryant] then repeated himself by saying, "This is the third one more question."
>
> [Bryant] is also reported to have had inappropriate conversations with [a]ssistant [p]roduct [a]dvisors ("APA") regarding qualified leads. [Bryant] consistently questioned APAs when they were trying to transfer leads to him. So, the Employer instructed [Bryant] "to accept all leads delivered to him by the [a]ssistant [p]roduct [a]dvisors without questioning the APA and without antagonistic conversations with them. He has been informed that if he receives a lead that is not qualified, he is not to have any communication with the APA either by e-mail or through conversation and is to deliver the unqualified lead information to a manager." However, on October 8, 2007, [Bryant] refused a lead stating that "He needed to finish up something," and would call back.
>
> Also on that day, [Bryant] refused to sign a new call audit guideline, which all Product Advisors are required to sign and return. To the Employer's knowledge, all Product Advisors had signed and returned the guidelines, with the exception of [Bryant]. In the occurrence where [Bryant] refused to sign the new call audit guidelines, he also exhibited rude behavior toward the [p]erformance [c]oach. [Bryant] told the [p]erformance [c]oach that this was "not a sales job,' and when the performance coach attempted to respond, [Bryant] stated, 'I was not telling you this because I wanted a response." [Bryant] also told the [p]erformance [c]oach that "it's my opinion and I don't want your opinion."
>
> On October 29, 2007, [Bryant] received another customer complaint regarding rude behavior. In this telephone call, the customer could not remember the details of her plan. [Bryant] stated, "That's the answer I always get, a customer will say I want what I have right now, and they'll say well I don't know!" Later in the conversation, the customer indicated that she was at work and wasn't able to listen to the information very well, so she asked [Bryant] to send the information to her. [Bryant] responded "very loudly" saying, 'You're not listening to me?!" and then laughed and "very aggressively tried to end the call."

(Appellant's App. pp. 5-6) (citations omitted). The ALJ concluded that Bryant had been fired for cause, and again affirmed the November 19, 2007 decision of the Workforce Development Deputy. The Review Board affirmed this determination.

Bryant now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Did the ALJ Sufficiently Develop the Record?*

Bryant first contends that the ALJ failed to ask important questions that would ensure the presentation of all the facts needed for her consideration. Bryant relies on 646 Ind. Admin. Code § 3-12-3(b), which provides in pertinent part:

> All hearings shall be conducted informally in order to determine the substantial rights of the parties. The parties may present evidence as the administrative law judge deems necessary for determining the substantial rights of the parties. The parties to the appeal may appear in person, by attorney, or duly authorized agent or representative, under section 12 of this rule, and shall have the right to examine their own witnesses, present evidence, and cross-examine witnesses of the opposing party. Any administrative law judge shall have the right to examine all witnesses and may require the parties to produce any available evidence he may deem necessary for proper determination of the case. *Where either party fails to appear or where either party is not represented by an attorney or duly authorized agent, it shall be the duty of the administrative law judge to examine the party's witnesses, and to cross-examine all witnesses of the other part, in order to ensure complete presentation of the case.* In general, rules of evidence and procedure for the trial of civil causes shall govern proceedings before an administrative law judge or the review board, but not to an extent as to obstruct or prevent a full presentation of fact or to jeopardize the rights of any interested party. No improper conduct shall be permitted during the progress of the hearing.

(Emphasis added). This regulation imposes an affirmative duty upon the ALJ to see that an unrepresented claimant is afforded the opportunity to fully present his case. *Steele v. Dep't of Workforce Dev.*, 853 N.E.2d 179, 180 (Ind. Ct. App. 2006).

> The [ALJ's] duty is limited. [She] does not have to explore every minute aspect of a claimant's termination and her work conditions. [She] should question all parties and witnesses with a view toward eliciting testimony necessary to ferret out the issues. Sufficient facts should be obtained during [her] questioning to allow for a reasonable disposition of this issue.

Richey v. Review Bd. Of Indiana Employment Sec. Div., 480 N.E.2d 968, 971 (Ind. Ct. App. 1985) (applying 640 IAC § 1-11-3, later transferred to 646 IAC 3-12-3 by P.L. 105-1994, SECTION 5).

Here the record shows that Bryant was unrepresented at the hearing before the ALJ. The ALJ questioned each of the witnesses and gave opportunity to both parties to ask questions as well. The ALJ reviewed the documented grievances presented by the Employer and gave Bryant ample opportunity to explain his version of what happened at each incident. Bryant did not dispute the description of the events that the Employer had presented as a basis for Bryant's dismissal, instead he stated that it was not his intent to be rude. The ALJ reviewed the undisputed facts and determined that in her judgment Bryant had been rude to customers and coworkers. From a full review of the record, we conclude that the ALJ met her burden under 646 IAC § 3-12-3(b) by probing the facts sufficiently to provide for a reasonable disposition of the issue of whether Bryant had been fired for cause.

II. *Sufficiency of the Evidence*

Bryant argues that there was not sufficient evidence to support the finding that he was fired for cause. Specifically, Bryant contends that the Employer's agent at the hearing could not identify the specific rule that he had violated, and there was no evidence present of abusive or offensive language that would meet the standard of rudeness.

Indiana Code section 22-4-17-12(f) provides an opportunity for appellants to challenge both the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of fact. Any decision of the Review Board is conclusive and binding as to all questions of fact. I.C. § 22-4-17-12. The Review Board's findings of

basic facts are subject to a "substantial evidence" standard of review. *McClain v. Review Bd. of Indiana Dept. of Workforce Development*, 693 N.E.2d 1314, 1317 (Ind. 1998), *reh'g denied*. However, where the conclusions of ultimate facts involve inference or deduction based on the findings of basic facts, these questions are sometimes described as questions of law. *Zeller Elevator Co. v. Slygh*, 796 N.E.2d 1198, 1206 (Ind. Ct. App. 2003), *trans. denied*. These "questions of law" are more appropriately characterize as mixed questions of law and fact; as such, they are typically reviewed to ensure that the Review Board's inference is "reasonable" or "reasonable in light of the Review Board's findings." *McClain*, 693 N.E.2d at 1317. In evaluating this conclusion, if no proposition of law is contravened or ignored by the agency conclusions, the "reasonable" inference standard gives deference to the agency decision. *Id*. at 1318.

The ALJ concluded that Bryant had been fired for just cause. Discharge for just cause includes discharge for any breach of duty in connection with work which is reasonably owed an employer by an employee. I.C. § 22-4-15-1(d). The basic facts relied upon by the ALJ to sustain her conclusion included descriptions of events which took place during a six month period: two instances resulting in customer complaints; Bryant's refusal of "leads" from assistant product advisors; and Bryant's refusal to sign a new call audit guideline coupled with comments made to a performance coach. From these instances, the ALJ concluded the ultimate fact that Bryant had been rude to the customers and coworkers. The ALJ then relied upon the proposition that discharge for just cause includes discharge for the willful disregard of the employer's interest or the employee's willful disregard of the employee's duties. *Osborn v. Review Bd. Of the Indiana Employment Sec. Div.*, 178 Ind. App. 22, 27, 381

N.E.2d 495, 498 (1978). The ALJ explained, "Conduct evidencing willful or wanton disregard of the Employer's interest, such as deliberate violations or disregard of standards of behavior which the Employer has the right to expect of his employee, qualifies as just cause." (Appellant's App. p. 6). The Review Board completely adopted these findings and conclusions.

As we explained above, Bryant did not dispute the facts that were presented to the ALJ by the Employer. Rather, he contends that his actions did not violate any specific rule and were not rude because he did not use offensive language. However, rudeness does not require offensive language, but can be the product of inappropriate sarcasm or cutting off another speaker during conversation. Moreover, it is apparent from the record that Bryant's conduct repeatedly offended customers and coworkers, which would run directly counter to the Employer's interests. We conclude that the decision of the ALJ, adopted by the Review Board, was supported by sufficient evidence and was a reasonable conclusion neither in

contravention nor ignorance of the law. Therefore, we cannot conclude that the Review Board's affirmation of the ALJ's decision was unreasonable.

CONCLUSION

Based on the foregoing, we conclude that the ALJ sufficiently developed the record and her decision was based on sufficient evidence; therefore, the Review Board's affirmation of the ALJ's conclusions was reasonable.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.